

Claims 1-24 are pending in the subject application. Claims 1-24 have been canceled. New claims 25-48 have been added. Accordingly, newly presented claims 25-48 are under consideration.

New claims 25-48 have been added. Support for these new claims is found in original claims 1-24 and throughout the specification. Specifically, support for new claims 26-30 is provided by original claims 2, 3, 4 and 5 respectively; additional support for new claim 30 is presented in original claims 10 and 12, and in the specification at page 4, lines 17-20 and lines 26-29 and at page 6, lines 9-12 and lines 27-29; and in Examples 2 and 3. Support for new claims 31-33 is found throughout the specification, for example, at page 14, line 20; page 2, lines 13-16; page 4, lines 17-21; and in Example 3. Support for new claim 31 is also presented in original claims 6 and 7. Additional support for new claims 32 and 33 is also found in original claims 8 and 9, respectively. Support for new claims 34-36 is provided by original claims 9 and 11 and is found in the specification in Example 3. Support for new claim 37 is found, for example, at page 20, lines 9-12 and in original claim 14. Support for new claim 38 is presented in Example 1 and by original claims 15 and 14. Support for new claim 39 is provided in original claim 16. Support for new claims 40 and 41 is presented by the examples and by original claims 17, 18 and 19. Support for new claims 42-45 is found in original claims 20, 20 and 22, 20, and 21, respectively. Support for new claims 46-48 is provided in the examples and by original claims 22 and 23. No issue of new matter is introduced by new claims 25-48.

Applicants have cancelled claims 1-24, thereby rendering the Examiner's rejection of these claims moot. For the purposes of clarity, however, applicants will address the rejection of the cancelled claims to render apparent that they do not pertain to the newly submitted claims. The Examiner's rejection of original claims 1-5 and 10 under 35 U.S.C. §101 does not pertain to the present claims as the newly submitted claims recite that a nucleic acid molecule of the invention is "an isolated nucleic acid molecule".

Newly submitted claims are directed to SEQ ID NO: 1 and fragments thereof, and sequences at least 70% homologous to SEQ ID NO: 1, which have promoter activity. It is noteworthy that Hanecak et al. (U.S. Patent No. 5,952,490) is directed to oligonucleotides capable of inhibiting phospholipase A₂, none of which are disclosed to exhibit promoter activity. In particular, the GGGG sequence to which the Examiner refers, appears to be effective against viral activity.

The rejection based on the Radin et al. reference (U.S. Patent No. 5,929,304) has been rendered moot in view of the cancellation of original claim 24.

Figure 1A of the Almoguera et al. reference, shows a nucleic acid sequence, of which nucleotides 1-175 correspond to SEQ ID NO: 1 at nucleic acid sequence positions 1557-1721 and nucleotides 176-494 correspond to nucleic acid sequence positions 2746-3064 of SEQ ID NO: 1. Thus, this reference fails to disclose SEQ ID NO: 1 of the invention, or a sequence 70% homologous to SEQ ID NO: 1 or its complement, or a fragment of SEQ ID NO: 1 having an activity of SEQ ID NO: 1 (i.e., seed specific promoter activity).

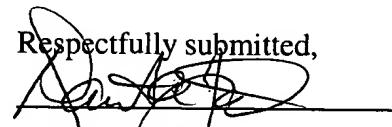
Inasmuch as the newly presented claims are directed to nucleic acid sequences having a specific promoter activity, it would be apparent to a skilled artisan that Applicants were both in possession of the invention at the time of filing and had provided sufficient guidance to practice the invention.

Fees

A check in the amount of \$55.00 is enclosed for a one-month extension of time. No other fees are believed to be necessitated by this amendment. However, should this be an error, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment or to credit any overpayment.

Conclusion

Applicants submit that the newly presented claims are in condition for allowance, and accordingly, early allowance of the claims is believed to be in order and is courteously solicited.

Respectfully submitted,

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Attachments: Marked-Up Copy of the Substitute Specification
Clean Copy of the Substitute Specification
Abstract on a Separate Page